vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.511 OF 2006

Devubai Madhav Lonare & Ors. ... Appellants

V/s.

Rakhamabai Nivrutti Lonare & Ors. ... Respondents

Mr.G.S. Godbole for Appellant

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 11, 2007**

P.C.:

. The Suit filed by the plaintiff for a declaration, possession and mesne profits was dismissed. An appeal therefrom was also dismissed. The defendant had raised cross objections which were dismissed by the lower appellate Court. The second appeal has been preferred by the defendant against the judgment of the lower appellate Court contending that certain findings of the trial Court were incorrect and, therefore, the Appellate Court ought to have allowed the cross objections. It is contended that these findings might be hurdle in proceedings which the defendants may institute and which would then be barred by *res judicata.*

2. A second appeal against such an order is not

maintainable against the dismissal of the cross objections in view of the judgment of the Supreme Court in the case of *Deva Ram & Anr. V/s. Ishwar Chand & Anr.*, **(1995) 6 SCC 733**. In the case of *Smt.Ganga Bai v/s. Vijay Kumar & Ors.*, **(1974) SCC 393**, the Apex Court has held that such findings would not operate as *res judicata* in any other proceedings which the defendant may adopt.

3. In view of the judgments in *Smt.Ganga Bai v/s. Vijay Kumar & Ors.*, (supra) and *Deva Ram & Anr.* (supra), the appeal is dismissed.